

ICO consultation on the draft right of access guidance

The right of access (known as subject access) is a fundamental right of the General Data Protection Regulation (GDPR). It allows individuals to find out what personal data is held about them and to obtain a copy of that data. Following on from our initial GDPR guidance on this right (published in April 2018), the ICO has now drafted more detailed guidance which explains in greater detail the rights that individuals have to access their personal data and the obligations on controllers. The draft guidance also explores the special rules involving certain categories of personal data, how to deal with requests involving the personal data of others, and the exemptions that are most likely to apply in practice when handling a request.

We are running a consultation on the draft guidance to gather the views of stakeholders and the public. These views will inform the published version of the guidance by helping us to understand the areas where organisations are seeking further clarity, in particular taking into account their experiences in dealing with subject access requests since May 2018.

If you would like further information about the consultation, please email SARguidance@ico.org.uk.

Please send us your response by 17:00 on **Wednesday 12 February 2020**.

Privacy statement

For this consultation, we will publish all responses received from organisations but we will remove any personal data before publication. We will not publish responses received from respondents who have indicated that they are an individual acting in a private capacity (e.g. a member of the public). For more information about what we do with personal data [see our privacy notice](#).

Please note, your responses to this survey will be used to help us with our work on the right of access only. The information will not be used to consider any regulatory action, and you may respond anonymously should you wish.

Please note that we are using the platform Snap Surveys to gather this information. Any data collected by Snap Surveys for ICO is stored on UK servers. [You can read their Privacy Policy.](#)

Q1 Does the draft guidance cover the relevant issues about the right of access?

- ☒ Yes
- ☐ No
- ☐ Unsure/don't know

If no or unsure/don't know, what other issues would you like to be covered in it?

Q2 Does the draft guidance contain the right level of detail?

The existing guidance and assistance from the ICO officers was very useful in helping us deal with the SAR we received, and in particular, guidance on the meaning of 'personal data'. The general support and advice from the ICO office on how to approach the SAR was most helpful and greatly appreciated .

However, it would have also been useful to have been able to look at detailed guidance on the meaning of other terms such as 'excessive' and to what extent the concept of proportionality is relevant ie:

- What is manageable for a large company may differ from what is manageable for a small unincorporated association
- It is unclear whether the nature of the Requestor makes a difference (i.e. a great deal of information will be generated by a key officer)
- It isn't clear whether a refusal to narrow the scope of the material requested (where it is voluminous) amounts to making a request excessive, but since the duty in this situation is to conduct 'reasonable searches' it does seem that a sense of proportion should be relevant here
- In the case of the BKA this is not just a question of it being 'burdensome' but an existential threat to the financial viability of the Association. The cost of reviewing all the emails requested to protect its duty to protect the data of 3rd parties would be likely to lead to the insolvency of the organisation or unmanageability due to the workload on volunteer officers might the request be considered excessive?

Similarly additional guidance on the meaning of 'manifestly unfounded' would be helpful.

- ☐ Yes
- ☐ No
- ☒ Unsure/don't know

If no or unsure/don't know, in what areas should there be more detail within the draft guidance?

Q3 Does the draft guidance contain enough examples?

- ☒ Yes
- ☐ No
- ☐ Unsure/don't know

If no or unsure/don't know, please provide any examples that you think should be included in the draft guidance.

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Q4 We have found that data protection professionals often struggle with applying and defining 'manifestly unfounded or excessive' subject access requests. We would like to include a wide range of examples from a variety of sectors to help you. Please provide some examples of manifestly unfounded and excessive requests below (if applicable).

The BKA is committed in principle to transparency of information for members insofar as is practicable, and this is reflected throughout its Constitution. However, our experience so far of Subject Access Requests was of a request which was unlimited in scope by someone who had been a [REDACTED] and who refused to give a reason for their request. This generated a disproportionate amount of work for officers, but would have been unaffordable to the Association if outsourced.

In our view this request was excessive but we complied fully with it because it was unclear to us whether it would be regarded as 'excessive' within the meaning of the DPA 2018/GDPR.

Q5 On a scale of 1-5 how useful is the draft guidance?

1 – Not at all
useful
☐

2 – Slightly
useful
☐

3 – Moderately
useful
☐

4 – Very useful
☐

5 – Extremely
useful
☒

Q6 Why have you given this score?

It would have been much harder to deal appropriately with the subject access request we received without being able to refer to the guidance.

Q7 To what extent do you agree that the draft guidance is clear and easy to understand?

Strongly
disagree
☐

Disagree
☐

Neither agree nor
disagree
☐

Agree
☒

Strongly agree
☐

Q8 Please provide any further comments or suggestions you may have about the draft guidance.

It would be very helpful to small associations with limited resources, such as ours, if any relevant developments in case-law could be reported on the ICO website; it is difficult to find any up to date information about the way the courts have interpreted the DPA 2018, and the cost of obtaining specialist legal advice on the relevant law would be prohibitive in an organisation of our size and nature.

This may be particularly important post-brexite should the lower courts be given the power to depart from ECJ rulings.

The level of guidance sought is not detailed legal exposition but broad principles which might assist us in deciding whether there are reasonable grounds to apply an exemption.

Q9 Are you answering as:

- ☐ An individual acting in a private capacity (eg someone providing their views as a member of the public)
- ☐ An individual acting in a professional capacity
- ☒ On behalf of an organisation
- ☐ Other

Please specify the name of your organisation:

British Kendo Association

What sector are you from:

Unincorporated sporting Association

Q10 How did you find out about this survey?

- ☐ ICO Twitter account
- ☐ ICO Facebook account
- ☐ ICO LinkedIn account
- ☒ ICO website
- ☐ ICO newsletter
- ☐ ICO staff member
- ☐ Colleague
- ☐ Personal/work Twitter account
- ☐ Personal/work Facebook account
- ☐ Personal/work LinkedIn account
- ☐ Other

Thank you for taking the time to complete the survey.

